



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Bente Nuebi Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

2008 OCT 30 PM

20 OCT 2008

Handwritten notes: 29-08-0789, Oct 29, 2008, 10:40 AM, and a signature.

Dear Speaker Won Pat:

Please find attached Bill No. 363 (EC), "AN ACT TO ADD A NEW CHAPTER 58A TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CONSTRUCTION OF THE JOHN F. KENNEDY HIGH SCHOOL," which I have signed into law as Public Law 29-114.

The authorization contained in Bill No. 363 will allow the government to construct the John F. Kennedy High School ("JFK"). However, in our effort to rebuild the school, we need to make sure we construct a safe structure for our students, teachers, administrators and visitors to the school.

Mandating rather than authorizing the issuance of a Request for Proposal within 30 days of enactment of this Act puts the government at a great disadvantage and exposes the government to a very costly construction project. Further, the requirement that occupancy of the JFK facility take place within nine months after execution of the contract may compromise the structural integrity of the facility, causing greater harm because of a quickly and poorly constructed facility. This provision also seems to favor a certain vendor that claimed to meet this requirement through an unsolicited offer, which is contrary to procurement law. We have a responsibility to ensure the facility is well constructed.

Finally, the government may not be able to pledge Section 30 funds as authorized in the Bill. The following loans/issues are pledged with Section 30 revenues:

12/1/01 Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A, (Water System Revenue Bond), Maturity Date 12/1/11, Balance \$35,365,000, Annual Payment \$9,823,750

9/20/02 Government of Guam \$10 million loan, per Public Law 26-84, Maturity Date 10/1/12, Balance \$5,942,612, Annual Payment \$1,281,818

07/17/08 Government of Guam \$13.8 million loan per Public Law 29-82, Maturity Date 7/1/12, Balance \$13,800,000, Annual Payment \$4,197,474


Section 30 is a viable cash source for the government of Guam. It is the cash lifeline for the government through the fiscal year, especially when other revenue sources do not materialize as anticipated.

Further, the Receiver in the federal consent decree case has recommended a revenue bond with Section 30 as a pledge to finance the closure of Ordot and the opening of the new landfill. If the government proceeds with the Receiver's recommended financing option, Section 30 will not be available as a future pledge.

With the imminent need to close Ordot and open a new landfill, coupled with the court imposing sanctions and contempt for noncompliance, the government must prioritize the financing of the consent decree projects. As such, and in light of the District Court's order adopting the Receiver's timeline, the government may not be able to pledge Section 30 for the financing for the construction of the John F. Kennedy High School.

We need to proceed cautiously with government financing, future expenditures and obligations of the government. The Administration is committed to working collaboratively with the Legislature to resolve these matters.

Sinseru yan Magåhet,



FELIX P. CAMACHO

I Maga'låhen Guåhan
Governor of Guam

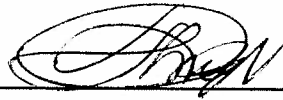
Attachment: copy of Bill

cc: The Honorable Tina Rose Muña Barnes,
Senator and Legislative Secretary

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

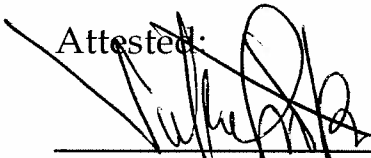
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 363 (EC)**, "AN ACT TO *ADD* A NEW CHAPTER 58A TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CONSTRUCTION OF THE JOHN F. KENNEDY HIGH SCHOOL", was on the 3rd day of OCTOBER, 2008, duly and regularly passed.



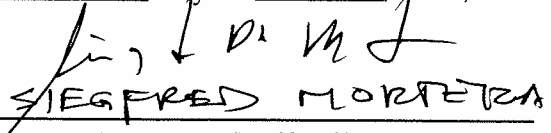
Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tira Rose Muña Barnes
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahaen Guåhan* this 3 day of OCT., 2008, at
7:18 o'clock P..M.



SIEGFRED MORFETA
Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 10 OCTOBER 2008

Public Law No. 29-114

I MINA'BENTE NUEBI NA LIHESLATURAN GUÁHAN
2008 (SECOND) Regular Session

Bill No. 363 (EC)

As substituted on the Floor,
and amended by the Committee of the Whole.

Introduced by:

J. T. Won Pat, Ed.D
Tina Rose Muña Barnes
Dr. David L.G. Shimizu
B. J. F. Cruz
Judith P. Guthertz, DPA
A. B. Palacios, Sr.
R. J. Respicio
Frank F. Blas, Jr.
Ray Tenorio
Edward J.B. Calvo
James V. Espaldon
Mark Forbes
Frank T. Ishizaki
J. A. Lujan
v. c. pangelinan

**AN ACT TO *ADD* A NEW CHAPTER 58A TO TITLE 5 OF
THE GUAM CODE ANNOTATED, RELATIVE TO THE
CONSTRUCTION OF THE JOHN F. KENNEDY HIGH
SCHOOL.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Title.** This Act *shall* be cited and referred to as the “*Ma Kåhat Act*
3 *of 2008*”.

4 **Section 2. Chapter 58A is hereby *added* to Title 5 of the Guam Code**
5 **Annotated to read as follows:**

1 **“CHAPTER 58A**

2 ***Ma Kåhat Act of 2008***

3 **§58A101. Title.**

4 **§58A102. Legislative Findings and Policies.**

5 **§58A103. Definitions.**

6 **§58A104. Authorization to Enter into Long-term Leases.**

7 **§58A105. Procurement.**

8 **§58A106. Responsibilities of Contractor.**

9 **§58A107. Assignments.**

10 **§58A108. Use of Tax-Exempt Bonds for Financing.**

11 **§58A109. Pledge of Section 30 Revenue.**

12 **§58A110. Utilities and Routine Maintenance.**

13 **§58A111. Maintenance Fund.**

14 **§58A112. Rules, Regulations and Restrictions.**

15 **§58A113. Severability.**

16 **§58A101. Title.** This Act *shall* be known and *shall* be cited as “***Ma***
17 ***Kåhat Act of 2008***”.

18 **§58A102. Legislative Findings and Policies.** *I Liheslaturan Guåhan*
19 finds that there is a critical shortage of public school facilities on Guam. Many
20 existing facilities are antiquated and are *not* fit for the purpose of public
21 education. The Guam Public School System is in need of at least three (3) new
22 public schools with all the related civil and structural facilities and amenities
23 customarily associated with a first rate public education facility. Specifically,
24 there is an immediate need to replace the John F. Kennedy (JFK) High School
25 in Tumon, Guam and to build a modern facility on the site of the existing
26 school. In an effort to overcome these financing hurdles and to provide for the

1 educational needs of the students of Guam, *I Liheslaturan Guåhan* desires to
2 authorize the government of Guam to enter into contracts for the financing,
3 design, construction and long-term capital maintenance of the John F. Kennedy
4 High School with private sector contractors who can provide long-term
5 financing obtained through tax-exempt obligations *or* other competitive
6 alternative financing based on long-term lease-backs to the government of
7 Guam. These projects will constitute the first phase of a capital improvement
8 plan approved by *I Liheslaturan Guåhan* to address Guam's long term
9 education, health, public safety and governmental needs. To facilitate the
10 financing, design, construction and maintenance of the facilities envisioned by
11 this Act, the government of Guam will be authorized to lease for up to thirty
12 (30) years government of Guam property on which the facilities will be
13 constructed. The lease of the government property will be to the contractor,
14 who will design and construct the facilities in accordance with specifications
15 approved by Guam Public School System, and provide funding for the design
16 and construction through the use of tax-exempt obligations *or* other competitive
17 alternative funding sources. The facilities and land will be leased back to the
18 government of Guam for a period *not to exceed* the initial ground lease to the
19 contractor over which time the government of Guam will amortize, as lease
20 payments to the contractor, the cost of the financing, design, construction and
21 related expenses of the facilities. The annual commitment of Section 30
22 Revenues authorized in the Act is based on the sum of Section 30 Revenue
23 available after the final payment on the Government of Guam Limited
24 Obligation (Section 30) Bonds, Series 2001A.

25 The contractor will also be responsible for the capital maintenance of the
26 public school facilities constructed under this Act, which costs *shall* be paid by

1 the government of Guam as provided for under this Act. At the expiration of
2 the Lease-Back Period, the government of Guam real property and the public
3 facilities constructed on the government of Guam real property will revert to the
4 government of Guam with *no* further obligations to the Contractor.

5 **§58A103. Definitions.** For purposes of this Chapter and *unless*
6 otherwise specified, the following words and phrases are defined to mean:

7 (a) “Act” means Chapter 58A of Title of the Guam Code
8 Annotated, known as the “*Ma Kâhat Act of 2008.*”

9 (b) “Contract” *shall* mean the design, construction and
10 financing contract entered into by and between the Education Agency
11 and the Contractor following negotiations on the response to the Request
12 for Proposal.

13 (c) “Contractor” *shall* mean the authorized entity which *shall* be
14 the signatory on the Contract and *shall* be fully responsible for carrying
15 out the design, construction, financing and maintenance of the Education
16 Facility. The Contractor may cooperate with another entity *or* entities in
17 any manner the Contractor deems appropriate to provide for the
18 financing, design, construction *or* maintenance of the public school
19 facilities envisioned by this Act.

20 (d) “Education Agency” *shall* mean the Guam Public School
21 System.

22 (e) “Education Facility” as used in this Act *shall* mean a
23 replacement high school to be located on the existing site of John F.
24 Kennedy High School in Tumon.

25 (f) “Lease” *shall* mean a lease from an Education Agency to the
26 Contractor entered into at the time of the Contract for the Property.

1 (g) "Lease-Back" shall mean the lease from the Contractor to
2 the Education Agency.

3 (h) "Lease-Back Period" shall mean the term of the lease from
4 the Contractor to the Education Agency.

5 (i) "Property" shall mean any property on which an Education
6 Facility is located.

7 **§58A104. Authorization to Enter into Long-term Leases.** For the
8 purpose of facilitating the financing of the design, construction and
9 maintenance of an Education Facility encompassed by this Act, the government
10 of Guam *or* an Education Agency, as the case may be, is authorized to lease, if
11 required, to the Contractor sufficient government of Guam real property on
12 which to construct, convert *or* rehabilitate an Education Facility; provided, such
13 property is in the inventory of the Education Agency *or* the government of
14 Guam. The property may be the site of an existing Education Facility under the
15 control of an Education Agency, which existing facility may be converted,
16 rehabilitated *or* demolished and rebuilt under the provisions of this Act.

17 The Education Agency is also authorized to lease back from the
18 Contractor the property for a period mutually agreed upon between the
19 Education Agency and the Contractor as may be reasonably necessary to
20 amortize over the Lease-Back Period the costs associated with the financing,
21 design and construction of the Education Facility. In no event shall the end of
22 such Lease-Back Period be *later than* the date thirty (30) years from the
23 scheduled date of completion of the Education Facility. The Lease-Back may
24 be structured as an annually renewable lease with provision for automatic
25 renewals to the extent that pledged revenue under Section 58A109 is available.

1 The Lease-Back *shall not* be construed as a debt under any applicable debt
2 limitation under the Guam Organic Act *or* Guam law.

3 **§58A105. Procurement.** Subject to the approval of *I Liheslaturan*
4 *Guåhan*, the government of Guam *or* an Education Agency may solicit
5 Requests for Proposals ('RFP') through the Department of Public Works, in
6 compliance with the Guam Procurement Law, for the financing, design and
7 construction of the Education Facility, together with maintenance of the
8 Education Facility over the Lease-Back Period, according to the needs of the
9 Education Agency and consistent with this Chapter. Notwithstanding the
10 foregoing, in connection with any amendments to an existing Lease *or* Lease-
11 Back, the Contractor with respect to such amendments *shall* be the Contractor
12 with respect to the existing Lease *or* Lease-Back. The RFP *shall* be issued
13 within thirty (30) days of enactment of this Act for replacement of the John F.
14 Kennedy High School Facility on the existing site; may include demolition of
15 such portions of the existing facility as necessary; and *shall* include a
16 requirement that occupancy of the JFK facility take place *no later than* nine (9)
17 months after execution of the Contract.

18 **§58A106. Responsibilities of Contractor.** The Contract *shall* require
19 that the Contractor be responsible for all costs, expenses and fees of any kind *or*
20 nature, associated with the design, civil improvements, on-site and off-site
21 infrastructure, construction, permits, and financing associated with the
22 completion of an Education Facility, including the financing of furniture and
23 equipment for the Education Facility, as and to the extent provided by the
24 Education Agency in the Request for Proposals. The Contractor *shall* also be
25 responsible for the capital maintenance of the schools during the Lease-Back
26 Period, but *shall not* be responsible for the capital maintenance of the furniture

1 and equipment. The Lease-Back may provide that *if* sufficient funds are *not*
2 appropriated *or* otherwise available for the payment of amounts due under the
3 lease and any maintenance agreement, the Education Agency will have the
4 obligation to vacate the Education Facility, and the Contractor *shall* have the
5 right of use and occupancy of the Education Facility for the remainder of the
6 term of the Lease, unless new mutually satisfactory terms are entered into. For
7 this purpose, the Lease may provide that its term *shall* be extended for a period
8 *not to exceed* the shorter of ten (10) years beyond the original term of the
9 Lease-Back *or* such period of time as is necessary to repay in full any financing
10 arranged pursuant to Section 58A108. The capital maintenance costs *shall* be
11 paid by the Education Agency on a periodic basis as incurred by the Contractor
12 on terms to be agreed to in the Contract for each Education Facility.

13 **§58A107. Assignments.** To facilitate the purposes of this Act and to
14 provide security for the holders of any financing instruments issued pursuant to
15 this Act, the Contractor may assign, without the need of the consent of the
16 Education Agency, the Contract, the Lease and the Lease-Back to any
17 underwriter, trustee *or* other party as appropriate to facilitate the issuance of the
18 tax-exempt obligations, other financial instruments *or* alternative financing for
19 the Education Facility.

20 **§58A108. Use of Tax-Exempt Bonds for Financing.** To minimize
21 the financing cost to the Education Agency, financing utilized by the Contractor
22 to fund the design and construction of an Education Facility *shall* be through
23 tax-exempt obligations *or* other financial instruments provided such financing is
24 available at interest rates determined by the Education Agency to be reasonable
25 and competitive. Alternatively, the Contractor may use an alternative method
26 of financing, including, but *not limited to*, a short term debt, mortgage, loan,

1 federally guaranteed loan *or* loan by an instrumentality of the United States of
2 America *if* such financing will better serve the needs of the people of Guam.
3 Such alternative financing *shall* be approved by *I Liheslaturan Guåhan*. The
4 purpose for the requirements of this Section is to assure the Education Agency
5 pays the lowest possible interest rate so that the cost to the Education Agency of
6 financing the design and construction of an Education Facility, amortized
7 through the Lease-Back payments from the Education Agency to the
8 Contractor, will be lower than regular commercial rates.

9 **§58A109. Pledge of Section 30 Revenues.** Rental payments under the
10 Lease and the Lease-Back may be secured by a pledge *or* other reservation of
11 revenues received by *or* on behalf of the government of Guam from the United
12 States of America pursuant to Section 30 of the Guam *Organic Act* (48
13 U.S.C.A. Section 1421h). Any pledge *or* reservation of Section 30 revenues
14 authorized by the Act *shall* be subordinate *only* to the existing lien securing the
15 Government of Guam Limited Obligation (Section 30) Bonds, Series 2001A.

16 Any such pledge *or* reservation authorized hereunder *shall* be valid and
17 binding from the time the pledge *or* reservation is made and *shall be limited to*
18 Nine Million Eight Hundred Twenty-five Dollars (\$9,825,000) per year during
19 the Lease-Back Period. The Section 30 revenues pledged *or* reserved and
20 thereafter received by the government of Guam *or* by any trustee, depository *or*
21 custodian *shall* be deposited in a separate account and *shall* be immediately
22 subject to such reservation *or* the lien of such pledge without any physical
23 delivery thereof *or* further act, and such reservation *or* the lien of such pledge
24 *shall* be valid and binding against all parties having claims of any kind in tort,
25 contract *or* otherwise against the government of Guam *or* such trustee,
26 depository *or* custodian, irrespective of whether the parties have notice thereof.

1 The instrument by which such pledge *or* reservation is created need *not* be
2 recorded.

3 **§58A110. Utilities and Routine Maintenance and Repair.** The
4 Education Agency *shall* be responsible for the connection and payment of all
5 utilities, including without limitation, power, water, sewer, telephone and cable,
6 and all routine interior maintenance and repair and exterior grounds keeping
7 and landscaping and upkeep of the Education Facility.

8 **§58A111. Maintenance Fund.** The Contract *or* a separate
9 maintenance agreement with the Contractor, and the Lease-Back, *shall* provide
10 that all capital maintenance of the Education Facility be performed by the
11 Contractor as a separate cost, the terms of which, and the manner for
12 establishing the amount of payment, *shall* be determined as a part of the request
13 for proposal process; provided, however, that said documents may, at the
14 discretion of the Education Agency, provide that capital maintenance with
15 respect to equipment (including collateral equipment), onsite utilities, offsite
16 utilities, access roads and other similar improvements need *not* be performed by
17 the Contractor. The Contract *or* agreement and the Lease-Back may provide for
18 a separate maintenance reserve fund for this purpose with sufficient funds to
19 pay the costs of capital maintenance for a reasonable period *not exceeding* five
20 (5) years. The maintenance reserve fund *shall* be used exclusively for the
21 purpose of capital maintenance and *shall* be an interest bearing account
22 segregated from other funds of the Education Agency.

23 **§58A112. Rules, Regulations and Restrictions.** The Department of
24 Public Works may promulgate rules and regulations pursuant to Guam law
25 necessary to implement the provisions of this Act.

1 **§58A113. Severability.** *If any provision of this Act or its application*
2 *to any person or circumstance is found to be invalid or contrary to law, such*
3 *invalidity shall not affect other provisions or applications of this Act which can*
4 *be given effect without the invalid provisions or application, and to this end the*
5 *provisions of this Act are severable.”*



**OFFICE OF THE SPEAKER
29th GUAM LEGISLATURE
JUDITH T. WON PAT, Ed.D**

September 29, 2008

To: I Mina'Bente Nuebi Na Liheslaturan Guahan

RE: Emergency Certification of Bill 363(EC)

After careful evaluation for a request to waive the requirements for a public hearing on bill 363(EC);

Bill No. 363 (EC) - J.T. Won Pat, Ed.D. / T.R. Muna-Barnes / D.L.G. Shimizu, Ed.D. - An act to add a new Chapter 58a to Title 5 of the Guam Code Annotated, relative to the construction of new schools, the construction of facilities for the University of Guam and the Guam Community College, and the renovation of existing schools

I certify, pursuant to 2 GCA §2103, that an emergency condition exists and that the requirements for a public hearing on bill 363(EC) is accordingly waived.

Senseramente,

Judith T. Won Pat, Ed.D.
Speaker

cc: Senator Rory J. Respicio
Clerk of the Legislature